UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,790	07/18/2003	Gregory K. Jones	2098-117	3508

24256 7590 01/07/2008

DINSMORE & SHOHL, LLP
1900 CHEMED CENTER
255 EAST FIFTH STREET
CINCINNATI, OH 45202

EXAMINER	
RUDDOCK, ULA CORINNA	
ART UNIT	**PAPER NUMBER**
1794	

MAIL DATE	DELIVERY MODE
01/07/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/622,790
Filing Date: July 18, 2003
Appellant(s): JONES, GREGORY K.

Holly D. Kozlowski
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 2, 2007 appealing from the Office action mailed November 2, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0071944	GARDNER et al.	6-2002
2004/0023585	CARROLL et al.	2-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-18 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al. (US 2002/0071944) in view of Carroll et al. (US 2004/0023585) or Sheth (US 4,929,303).

Gardner et al. disclose a breathable composite material useful housewrap [0004 & 0032]. The film and nonwoven fabric layers comprise polyolefin resin compositions, such as high density polyethylene and polypropylene [0020]. Additives are used in the film-forming resins and a preferred additive is calcium carbonate [0021]. The nonwoven fabrics can be spunbonded and can comprise polypropylene filaments [0029 & 0030]. The basis weight of the fabrics can be 15 to 140 g/m^2 (or .44 to 4.13 oz/yd^2 [0032]. The film-forming resin composition includes high density polyethylene [0033]. Regarding claims 11 and 12, multilayered configurations of the nonwoven fabric and breathable film layers, optionally with one or more layers of similar or dissimilar materials, are contemplated. A lightweight laminate having an inner breathable film layer laminated to outer surface layers of continuous filament nonwoven web, such as a polypropylene spunbonded web, provides a composite having a combination of breathability, liquid barrier properties, strength, light weight, and low cost [0025]. As seen in Example 7, the composite has moisture vapor transmission rates in the range claimed by applicant [0074].

Gardner et al. disclose the claimed invention except for the teaching that the nonwoven fabric is a polyethylene cross-laminated open mesh having a basis weight of greater than about 0.7 oz/yd^2 and that the fabric layer exhibits less than about 30% elongation as measured according to ASTM D5034 in at least one direction.

Carroll et al. (US 2004/0023585) disclose a vapor permeable, liquid impermeable composite used in housewrap [0002[. The composite requires polyethylene film-forming resin [0038] and calcium carbonate filler [0039]. The composite further comprises a nonwoven fabric layer that has a suitably open mesh and comprises polyethylene [0043]. Furthermore, the scrim can preferably comprises a scrim available under the tradename CLAF® [0065], which is a specific type of fabric disclosed in Applicant's own specification. Sheth (US 4,929,303) disclose composite breathable housewrap films comprising a breathable polyolefin film heat laminate to a nonwoven HDPE fabric (abstract). The composite also requires a calcium carbonate filler (col 3, ln 27-55). Preferred fabrics include the CLAF nonwoven HDPE fabrics. As seen in Table II, the basis weight of the CLAF fabric is greater than 0.7 oz/yd^2. The fabrics should have an elongation of less than about 30% (col 6, ln 50-52). It would have been obvious to have used either Sheth's or Carroll's polyethylene nonwoven open mesh as the fabric layer in Gardner's composite, motivated by the desire to create a housewrap with exceptional strength and durability.

Carroll et al. also disclose that the fabric may be woven of any suitable material comprising polyethylene or polypropylene [0043]. It would have been obvious to have used Carroll's woven fabric as the fabric layer of Gardner et al., motivated by the desire to create a laminate having increased dimensional stability.

It also would have been obvious to have made the fabric of Gardner et al. have an elongation of less than 30% as disclosed by Sheth, motivated by the desire to create a laminate having excellent strength properties.

(10) Response to Argument

Appellant argues that the Sheth material is some what cumbersome and expensive to manufacture. However, this argument is not commensurate in scope with the claims, as presently written. The claims do not mention preferred processing steps. Furthermore, it should be noted that the claims do not preclude stretching. Appellant also argues that Gardner et al. provide no teaching or suggestion for use of a low elongation material. While this may be true, the Gardner et al. reference was not cited in the rejection for its teaching of a low elongation material; the Sheth reference was used for its disclosure of a low elongation fabric. It appears as though Appellant is arguing references separately. Appellant cannot show non-obviousness by attacking references individually where, as here the rejections are based on a combination of references. *In re Keller*, 208 USPQ 871 (CCPA 1981). It is the Examiner's opinion that the Gardner references disclose the claimed invention except for the teaching of a fabric that is a polyethylene open mesh and that the fabric layer exhibits less than about 30% elongation. Carroll and Sheth were used for their teachings of a polyethylene open mesh and for Sheth's specific teaching of a fabric having an elongation of less than about 30%. It would have been obvious to one having ordinary skill in the housewrap composite art to use a mesh having an elongation of less than 30% in a composite, motivated by the desire to create a housewrap that is not only lightweight, but also has exceptional

strength and durability. Appellant also argues that Gardner et al. fail to disclose a breathable material with a layer or coating formed of a crystalline polymer composition as defined in the present application having greater than 50% of the polymer composition in crystalline form. This argument is not persuasive because "greater than 50%" encompasses 100% and it is the Examiner's finding that the polymer of Gardner et al. has 100% crystallinity. Furthermore, it is not seen how Applicant's microporous coating which comprises at least 50% HDPE differs from Gardner's coating which also comprises high density polyethylene (HDPE) [0033]. Gardner et al. disclose a breathable composite material useful housewrap [0004 & 0032] comprising a film and nonwoven fabric layers that comprise polyolefin resin compositions, such as high density polyethylene and polypropylene [0020]. These components are the same materials claimed by Appellant to be low elongation and crystalline. It is not seen how the same components would have different properties than the ones claimed by Appellant.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ula C Ruddock/
Primary Examiner, Art Unit 1794

Conferees:

/Romulo Delmendo/

Romulo Delmendo, Acting Appeals Specialist

/Terrel Morris/
Terrel Morris
Supervisory Patent Examiner
Group Art Unit 1794